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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/763,861

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Scott E. Jahns

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EXAMINER

BACHMAN, LINDSEY MICHELE

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/763,861	Applicant(s) JAHNS ET AL.	
	Examiner LINDSEY BACHMAN	Art Unit 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-18,20-26,28,29 and 48-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-18,20-26,28,29 and 48-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1-29-09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to Applicant's Pre-Brief Conference request filed 28 April 2009.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 21, 22, 24 26, 48, 50-54, 56 are rejected under 35 U.S.C. 102(e) as being anticipated by Golden et al. (US Patent 6,695,859).

Claim 21, 24: Golden'859 teaches a device that contains a cutting mechanism (705; column 9, lines 35-41); an inflatable seal (800) for closing an opening in a blood vessel (714) (column 12, lines 50-65). The inflatable seal has a continuous surface and an opening for accepting fluids for inflation (column 12, lines 50-55). The seal is attached to a tether (727) that is independent of the cutting mechanism (Figure 15c, 15d

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shows this). The device further contain a tool body (704) attached to the cutting mechanism. The tool body has a lumen and is fixed relative to the cutting mechanism (Figure 15a). The seal is movable relative to the cutting mechanism/tool body (Figure 15c).

Claim 22: Golden'859 teaches a lumen (727) attached to the inflatable chamber (column 12, lines 50-55).

Claim 26: Golden'859 teaches that a shaft/rod (326) is attached to the seal.

Claim 48, 50, 51, 56: Golden'859 teaches a device that contains a cutting mechanism (705; column 9, lines 35-41); a seal (702) having a plurality of seal members coupled to a delivery shaft (727) configurable into a delivery configuration (Figure 16a) and a sealing configuration (Figure 16b) for closing an opening in a blood vessel (714). The device further contain a tool body (704) attached to the cutting mechanism. The tool body has a lumen and is fixed relative to the cutting mechanism (Figure 15a). The seal is movable relative to the cutting mechanism/tool body (Figure 15c).

Claim 52, 53, 54: The shaft (727) is disclosed as being hollow. The opening in the shaft can be used to deliver fluids or guide sutures through the sealing member (see Figure 16d).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 1, 3-7, 9-14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Golden et al. (US Patent 6,695,859) in view of Burbank, et al. (US Patent 6,689,071).

Claims 1, 5, 6, 7: Golden'859 teaches a device that contains a cutting mechanism (705; column 9, lines 35-41); a seal (730) for closing an opening in a blood vessel (714). The seal is attached to a tether (727) that is independent of the cutting mechanism (Figure 15c, 15d shows this). The device further contain a tool body (704) attached to the cutting mechanism. The tool body has a lumen and is fixed relative to the cutting mechanism (Figure 15a). The seal is movable relative to the cutting mechanism/tool body (Figure 15c).

Golden'859 does not teach that the cutting mechanism contains an electrode.

Burbank'071 teaches a cutting device (102) that contains an electrode (126) because using RF energy to cut tissue is more efficient than cutting with a blade because it does not need to be frequently replaced like blades (column 2, lines 26-55). Regarding Claims 5-7, Burbank'071 teaches a metallic conductor (128) (column 5, lines 6-18) that delivers RF energy (column 4, lines 50-55) to the electrode (128) (column 5, lines 34-40). It would have been obvious to one skilled in the art at the time the invention was made to modify the cutter taught by Golden'859 with an RF cutter taught by Burbank'071 because RF cutters do not need to be replaced because they do not get dull.

Claim 3, 4, 11, 12: Golden'859 teaches that a shaft/rod (326) is attached to the seal.

Claim 9: Golden'859 teaches the seal is flexible (column 19, lines 15-16).

Claim 10, 18: Golden'859 teaches a different sealing member that contains ribs (854) (Figures 19a). The sealing members shown in Figures 19a is shown on the same device as discussed above with respect to Figure 15. It would be obvious to substitute one of Golden'859's sealing members for another, especially in light of their use on the same device.

Claim 13, 14: Golden'859 teaches the use of an inflatable seal (800) (Figure 17a). The sealing members shown in Figures 17a is shown with the same device as discussed above with respect to Figure 15. It would be obvious to substitute one of Golden'859's sealing members for another, especially in light of their use on the same device.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Golden'859 in view of Burbank'071, as applied to Claim 1, in further view of Fortune et al. (US Patent Application 2004/0215231).

Golden'859 in view of Burbank'071 teach the limitations of Claims 8, except for the use of a coating.

Fortune'231 teaches that the seal can have a coating because it improves adhesion of the sealing member to the vessel wall (paragraph [0045]). It would have been obvious to one skilled in the art at the time the invention was made to modify the seal taught by Golden'859 in view of Burbank'071 with a coating taught by Fortune'231 to improve bonding of the seal with the vessel wall and improve the quality of the seal.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Golden'859 in view of Burbank'071, as applied to Claim 1, in further view of Blatter (US Patent 6,248,117).

Golden'859 in view of Burbank'071 teach the limitations of Claims 15-17 except for an opening in the seal.

Blatter'117 teaches an opening (that wire 150 passes through) in the sealing member (160) in order to pass a wire for piercing the wall of a blood vessel (column 21, lines 31-43). It would have been obvious to one skilled in the art at the time the invention was made to modify the seal of Golden'859 in view of Burbank'071 with a hole taught by Blatter'117 in order to pass a piercing wire.

Claims 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Golden'859 in view of Burbank'071, as applied to Claim 1, in further view of Diaz (US Patent 5,690,674).

Claim 20: Golden'859 in view of Burbank'071 do not teach the use of an absorbable seal.

Diaz'674 teaches an absorbable seal (column 3, lines 15-22). The claim would have been obvious because the substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

Claims 23 and 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Golden'859, as applied to Claim 21 and 48, in view of Fortune et al. (US Patent Application 2004/0215231).

Golden'859 teaches the limitations of Claims 23 and 49, except for the use of a coating.

Fortune'231 teaches that the seal can have a coating because it improves adhesion of the sealing member to the vessel wall (paragraph [0045]). It would have been obvious to one skilled in the art at the time the invention was made to modify the seal taught by Golden'859 with a coating taught by Fortune'231 to improve bonding of the seal with the vessel wall and improve the quality of the seal.

Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Golden'859, as applied to Claim 21, in view of Blatter (US Patent 6,248,117).

Golden'859 teaches the limitations of Claims 28 and 29 except for an opening in the seal.

Blatter'117 teaches an opening (that wire 150 passes through) in the sealing member (160) in order to pass a wire for piercing the wall of a blood vessel (column 21, lines 31-43). It would have been obvious to one skilled in the art at the time the invention was made to modify the seal of Golden'859 with a hole taught by Blatter'117 in order to pass a piercing wire.

Claims 25 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Golden'859, as applied to Claim 48, in view of Gianturco (US Patent 5,258,000).

Claim 25: Golden'859 does not teach that the sealing member contains ribs.

Gianturco'000 teaches that the sealing member (13, 16) contains ribs for the the purpose of creating the sealing member. It would be obvious to construct the inflatable

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member of Golden'859 as taught by Gianturco'000 this in order to modify the shape of the inflatable member.

Claim 55: Golden'859 does not teach that the seal member is delivered in a stacked configuration.

Gianturco discloses a device (Figure 6) for puncture closure that contains two closure members (13, 16) that are intended for placement within a puncture. The closure members are stacked in the delivery configuration. It would have been obvious to one of ordinary skill in the art to use the closure device of Gianturco because it is a simple substitution of equivalent elements.

Conclusion

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 29 January 2009 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSEY BACHMAN whose telephone number is (571)272-6208. The examiner can normally be reached on Monday to Thursday 7:30 am to 5 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. B./

Examiner, Art Unit 3734

/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3734